

2005 Annual Report

Indiana State Ethics Commission

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P*romoting the ethical conduct of state officers and employees in the executive and administrative branch of state government.*

— Mission of the Indiana State Ethics Commission

The Commission achieves its mission through:



- administering a program of education and training
- proposing legislation to the General Assembly
 - adopting rules relating to conduct and ethics
 - issuing advisory opinions
 - enforcing statutes and rules, and
- evaluating and improving its operations and services.

By administering the Code of Ethics for the Conduct of State Business, the Commission itself receives complaints filed by the Office of the Inspector General, holds public hearings, decides if ethics violations have occurred, and recommends or imposes appropriate sanctions.

The current enabling statute is found at [IC 4-2-6](#), as amended May 11, 2005. The current code of ethics is found at [42 IAC 1](#) and [40 IAC 2](#).

Commission Members



David Hadley, Chairperson of the Political Science Department at Wabash College, first joined the Commission in 1992 and served as chairperson from 1994 until his resignation in November 1997. He was later appointed by Governor Frank O'Bannon to a four year term, which expired September 1, 2005. Hadley is a graduate of Indiana University. He holds a M.A. and Ph.D. from Indiana University in Political Science.



Clare Kraegel Nuechterlein was appointed by Governor Mitch Daniels June 2005 to a four year term which expires September 1, 2007. In September 2005, Ms. Nuechterlein succeeded David Hadley as Chairperson of the Commission. Ms. Nuechterlein is a professor at Valparaiso University School of Law, from which she graduated in the centennial class of 1979. Professor Nuechterlein earned her undergraduate and master's degrees from Valparaiso University.

Professor Nuechterlein began her legal career as City Attorney of Goshen, Indiana, and also served as a member of the Board of Public Works and Safety from 1980-1983.

From 1986-1989, Ms. Nuechterlein was an attorney advisor with the United States Department of Education, Office for Civil Rights, in Washington, D.C., where she advised the Presidential-appointed Assistant Secretary for Civil Rights.

From 1989-2000, Ms. Nuechterlein was a trial attorney with the United States Department of Justice/Assistant United States Attorney for the Eastern District of California in Sacramento, where she litigated federal law enforcement cases in the federal trial courts and the Ninth Circuit Court of Appeals. She and her husband, Christopher A. Nuechterlein, moved back to Indiana in 2000 when he assumed his position as United States Magistrate Judge for the Northern District of Indiana, South Bend Division.



James Williams was appointed to the State Ethics Commission in February 2001 by Governor Frank O'Bannon. Mr. Williams received his B.A. in Economics from Indiana University, Bloomington, in 1964 and his J.D. from the University of Chicago in 1967.

Mr. Williams is an attorney with Middleton & Reutlinger, which has offices in Jeffersonville and Louisville. Mr. Williams serves on the boards of the

Clark County Public Defender, the District 14 Pro Bono Program, and the New Hope Services, Inc.



James N. Clevenger, Kizer & Neu, LLP, of Plymouth, Indiana, was appointed by Governor Joe Kernan September 1, 2004, to a four-year term on the Ethics Commission. Mr. Clevenger received his B.A. from Hanover College and his J.D. from Indiana University. He is presently the County Attorney for Marshall County and has served as past Town Attorney for Walkerton and Culver. Mr. Clevenger has represented several area school corporations and business

clients in Marshall County.

Mr. Clevenger currently sits on the boards of St. Joseph Hospital Development Committee for Marshall County Campus and Plymouth Civic Improvement Commission (Vice Chairperson). He is the past president of Plymouth Chamber of Commerce; the Marshall-Starke Development Center; and Marshall County United Way.

Mr. Clevenger is a member of the American Bar Association; Indiana State Bar Association; Indiana Trial Lawyers Association; Marshall County Bar Association; and First Presbyterian Church of Plymouth.



Thomas John Brunner, Jr., a partner with Baker & Daniels Law Firm in South Bend, was appointed by Governor Joe Kernan on June 8, 2004, to a four-year term on the Ethics Commission. He resigned from the Commission in April 2005. Mr. Brunner is a former member of the Indiana Supreme Court Disciplinary Commission and received his B.A. and J.D. degrees from the University of Notre Dame.



Priscilla Diane Keith, General Counsel, Health and Hospital Corporation, Indianapolis, was appointed by Governor Joe Kernan on June 8, 2004, to a four-year term on the Ethics Commission. Her term expires September 2008.



Edward E. Charbonneau was appointed by Governor Mitch Daniels to the Commission on October 12, 2005 to serve until September 1, 2009. Mr. Charbonneau is licensed to practice law before the United States Supreme Court and in the states of Indiana, Pennsylvania and Texas. He is member of the Indiana Bar Association.

Mr. Charbonneau retired in 2002 from U.S. Steel Corporation after 36 years with the company. During that time he worked in various capacities, the last 10 years as head of government and community affairs for USX Corporation, the parent company of U.S. Steel and Marathon Oil. Since September 2002, he has served as Executive Director of the Northwest Indiana Local Government Academy. From March 1, 2004 - February 1, 2005, Mr. Charbonneau served as interim President of the Northwest Indiana Forum, a three county economic development corporation. He was appointed an Administrative Law Judge for the Gary Police Civil Service Commission in 2003.

Mr. Charbonneau received his AB from Wabash College, Crawfordsville, IN; his MBA from Loyola University, Chicago, IL; and his JD from South Texas College of Law, Houston, Texas.

He also has served as the Vice Chair of Porter County United Way; on the Board of Directors, and as Board Secretary of the Methodist Hospitals; on the Region 1 Board of Trustees of Ivy Tech State College; on the Executive Board of Northwest Indiana; Quality of Life Council; and the Board of Directors of WYIN Public Broadcasting.

Staff

Mary Lee Comer, Director . . . is responsible for all agency administrative, legislative and legal activity, plus the supervision of staff.

Denise Young, Executive Assistant . . . The Executive Assistant assists the Director in all matters. The Executive Assistant played a vital role in the drafting of the new Code of Ethics and conducts research and analysis for the Director.

David A. Clark, Investigator . . . performs fact-finding on all complaints, investigates all complaints and cases initiated by the Commission on its own or upon request of the Governor. The Investigator also audits Financial Disclosure Statements. (Transferred to the Office of Inspector General, April 2005.)

Mary C. Hill, Information Director . . . provides information services and administers a program of training for all employees of the executive branch.

Joann Flynn, Business Administrator . . . handles all correspondence, word processing, filing, purchasing, personnel matters, and maintains the Index of Conflict of Interest Statements. She is also responsible for financial accounting and for preparing the annual budget. (Transferred to the Office of Inspector General, August 2005.)

Budget

FY 2004-2005

Appropriation	\$255,549
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Actual Expenditure	\$248,442
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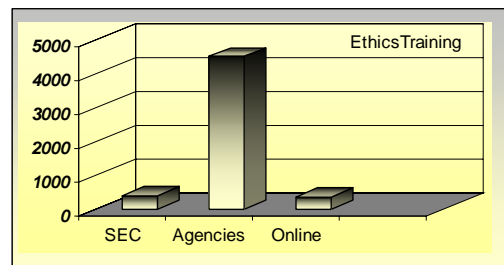
Cost of Commission per:

-capita (based on state population of 5,544,159) = \$.0448

-state employee (based on 38,000 state employees) = \$.15

Ethics Training

Ethics training reaches employees at every level of state government. New employees and special state appointees are required to receive ethics orientation within six weeks of their date of hire. All state employees are to receive ethics refresher training every two years. All persons who contract with or receive licenses or permits from the State are required by law to abide by gift restrictions in [42 IAC 1-5-1](#) and [42 IAC 1-5-2](#).



Supervisors and managers may participate in a class (*Ethics for Supervisors and Managers*) that establishes guidelines for handling ethics situations in the work place. Agency heads, state officers, and ethics officers may attend *Ethics for Executives*, which focuses on creating an ethical work environment.

The above classes also are [online](#) so that employees may take the classes at their work stations.

In addition to the regularly scheduled ethics classes in which 117 employees were trained, agencies and offices may request training sessions for their employees. In 2005, 298 employees from 17 agencies and two state offices received training specific to their agencies.

Training by State Offices & Agencies

State agencies and offices may provide orientation for new employees and refresher training for others. Agencies and offices file reports of their training activity with the Commission on a quarterly basis. These quarterly reports reflect the number of new employees receiving orientation training from their agencies plus any online training.

The total number of employees reported trained by their agencies during 2005 was 4,490. Added to the 415 employees trained by the State Ethics Commission plus the 367 employees taking the online training, the total reached 5,272. The reported number of employees hired in 2005 was 4,127.

Post-Employment Training

As employees and special state appointees leave government service, they are given the post-employment guide, [*Understanding Post-employment Restrictions*](#), by their human resources representative or designated person. The guide consists of laws that apply specifically to former state officers and employees of the executive and administrative branch of state government.

Public Information

Documents Available for Viewing & Copying: The State Ethics Commission maintains various filings (see Public Documents below) for public inspection. All of these filings are available in the Commission's office during normal business hours (8:00 a.m. to 4:30 p.m.) on regular state working days.

The Commission also maintains files of minutes of its meetings, records of cases that go to public hearing (or where a settlement occurred after a finding of probable cause), and reports for cases in which an agreed settlement was reached.

For the calendar year 2004, 1,220 Financial Disclosure statements were filed. In 2005, 14 travel waivers and 64 gift waivers were filed. The number of Conflict of Interest filings indexed was 2,500 (these were filings statewide as per IC 35-44-1-3).

Public Documents

Financial disclosure statements: required of state officers, candidates for state offices, executive branch agency heads, and certain other state employees.

Notices of recusal: due to conflicts or potential conflicts of interest.

Waivers: to accept certain gifts or travel-related reimbursements.

Index of filings: under the criminal conflict of interest law (original disclosures filed with the State Board of Accounts).

Reports of contributions and expenses to: Governor's Public Building Foundation and Governor's Residence Commission.

Code of Ethics, [42 IAC 1](#)

The Code of Ethics for the Conduct of State Business is the legal floor of minimum standards to which employees in the executive and administrative branch of state government must adhere. The code states what employees may and may not do.

Publications

The *2004 Annual Report* was added to the list of publications available on the Commission's web site. Hard copies of these publications (statutes, rules, and one-page guides) are available to the public and state employees. The newsletter, *Ethics News*, is issued every other month and is available as a PDF file on the Internet.

A.D.A.

In compliance with the Americans With Disabilities Act (A.D.A.), the Commission's training videos are closed captioned and printed materials are available in large print and braille upon request.

Investigations

Investigation and Complaint Procedure

In May 2005, legislation was passed creating the Office of Inspector General and putting the State Ethics Commission under the jurisdiction of the Inspector General. At that time, many procedural functions of the Commission were moved to the Inspector General. In the past, the Commission initiated investigations of ethics complaints; the Office of the Inspector General now initiates investigations and files ethics complaints with the Commission. Under new legislation, the Commission may only "refer" a matter to the Inspector General for investigation. In practice, the new Ethics Commission now acts as a quasi-grand jury in some respects and a quasi-petit jury in others. For instance, if the Inspector General files a complaint with the Commission alleging a violation of the ethics code, the Commission has the authority to find probable cause, accept the matter for a public hearing or to reject it on grounds that it is frivolous, inconsequential, or moot. The Commission may also forward the complaint to the local prosecutor, the attorney general, the state board of accounts or other appropriate person for action.

In hearing the details of an investigation and deciding how or whether to proceed on a complaint brought to its attention, the Commission undertakes a similar function to that of a grand jury. However, if the Commission decides that there is probable cause for a violation, the respondent must be notified and a public hearing must be set within sixty days of the determination. (The respondent may instead enter an agreed settlement concerning the facts and proposed sanction which is submitted to the State Ethics Commission for its consideration.) At the public hearing, the Commission decides whether there is "competent and substantial evidence to find a violation."

If the Commission does not find probable cause, the complaint is dismissed and the person who filed the complaint and the respondent are notified. In such a situation, all information received by the Commission in its investigation remains confidential unless the respondent waives the right to confidentiality and elects to have the records divulged.

After the public hearing or acceptance of an agreed settlement, the Commission must issue a report stating its findings of fact and recommending or imposing sanctions. The Commission's sanction authority can be found at [IC 4-2-6-12](#).

The report of the Commission must be sent to the employee, the appointing authority of the employee, and the Governor. The Commission may also forward the report to the prosecuting attorney of a county in which the violation occurred, the State Board of Accounts, the state personnel director, the attorney general, a state officer, the appointing authority or any other appropriate person. The report is available for public inspection and copying.

Financial Disclosures

Who Files?

One of the Commission's principal responsibilities is to administer the financial disclosure provisions of the statute. Persons required to file a financial disclosure report are: state officers, candidates for state office, chief executives of agencies in the executive branch of state government, the director of each division of the Department of Administration and purchasing agents within the Procurement Division of the Department of Administration; members of the alcohol and tobacco commission; members of the workers compensation board; members of the Indiana utility regulatory commission and any person with final purchasing authority within the Indiana commission for higher education and the department of transportation.

The report may be filed online no later than February 1 for the previous calendar year or within sixty days of being employed or within thirty days of leaving employment. The person filing must affirm to the statement under the penalty of perjury and may file an amended statement upon discovery of additional required information. The required information for filing a financial disclosure statement may be found at [IC 4-2-6-8](#).

Audits

The Executive Assistant performs a desk audit on all reports making sure all forms are complete and filled out according to the given instructions. The Executive Assistant also looks for information suggesting a conflict of interest or other impropriety. In 2005, for the calendar year 2004, there were no forms revealing information leading to a Commission-initiated investigation. All forms are maintained for public inspection.

Advisory Opinions

The State Ethics Commission is directed by statute to issue Advisory Opinions interpreting IC 4-2-6, 42 IAC 1, and any other statute or rule governing official conduct. Advisory Opinions are issued upon request or by the Commission's own motion.

If an Advisory Opinion is requested, an "inquiry" (written request) must be filed with the Commission at least seven days prior to a Commission meeting.

The person submitting the inquiry must appear before the Commission at a monthly or special meeting and attest to the facts of their situation under affirmation of the penalty of perjury.

An Advisory Opinion is binding on the Commission in any subsequent allegations concerning the person who requested the opinion and who acted on it in good faith. The opinion is also a public record.

Employees are encouraged to ask their agency head, ethics officer, or supervisor for guidance about any situation which they feel might involve an ethics violation. In addition, employees may call the Commission's director for informal guidance. In 2005, 506 informal opinions were issued.

Public Office is a public trust . . .

Therefore, employees and special state appointees of state government must conduct themselves in such a manner that the general public will have confidence that their performance is always for the public good. The following statements are minimum standards of conduct. For state employees and special state appointees to follow.

- They are to be impartial in the discharge of their duties.
- Decisions and policies must not be made outside the proper channels of state government.
- Public office is not to be used for private gain.
- They may not make unapproved use of state property, personnel, or facilities.
- They may not use state time for other than state duties.
- They may not solicit or accept outside payments for the performance of state duties.
- They may not have outside employment incompatible with their state employment or against their agency's rules.
- They may not accept a gift, favor, service, entertainment, food or drink from a person having a business relationship with their agency or which could influence their official action.
- They may not accept payment for an appearance, speech, or article if the appearance, speech, or article could be considered part of the employees' official duties.
- They may not accept payment of expenses for travel, conventions, conferences, or similar activities which could influence the employees' action.
- They may not solicit political contributions from employees they supervise.
- They may not solicit political contributions from persons or entities that have a business relationship with their agency.
- Appointing authorities and all employees or special state appointees with purchasing or procurement authority may not solicit political contributions on behalf of any candidate for public office unless that individual is a candidate for public office himself or herself.
- Former state officers, employees and special state employees must abide by post-employment restrictions.



All my growth and development led me to believe that if you really do the right thing, and if you play by the rules, and if you've got good enough, solid judgment and common sense, that you're going to be able to do whatever you want to do with your life.

— *Barbara Jordan*

Information Maintained by the Office of Code Revision Indiana Legislative Services Agency

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IC 4-2-6

Chapter 6. Ethics and Conflicts of Interest

IC 4-2-6-1**Definitions**

Sec. 1. As used in this chapter, and unless the context clearly denotes otherwise:

(1) "Agency" means an authority, a board, a branch, a bureau, a commission, a committee, a council, a department, a division, an office, a service, or other instrumentality of the executive, including the administrative, department of state government. The term includes a body corporate and politic set up as an instrumentality of the state and a private, nonprofit, government related corporation. The term does not include any of the following:

- (A) The judicial department of state government.
- (B) The legislative department of state government.
- (C) A state educational institution (as defined in IC 20-12-0.5-1).
- (D) A political subdivision.

(2) "Appointing authority" means the chief administrative officer of an agency. The term does not include a state officer.

(3) "Assist" means to:

- (A) help;
- (B) aid;
- (C) advise; or
- (D) furnish information to;

a person. The term includes an offer to do any of the actions in clauses (A) through (D).

(4) "Business relationship" means dealings of a person with an agency seeking, obtaining, establishing, maintaining, or implementing:

- (A) a pecuniary interest in a contract or purchase with the agency; or
- (B) a license or permit requiring the exercise of judgment or discretion by the agency.

(5) "Commission" refers to the state ethics commission created under section 2 of this chapter.

(6) "Compensation" means any money, thing of value, or financial benefit conferred on, or received by, any person in return for services rendered, or for services to be rendered, whether by that person or another.

(7) "Employee" means an individual, other than a state officer, who is employed by an agency on a full-time, a part-time, a temporary, an intermittent, or an hourly basis. The term includes an individual

who contracts with an agency for personal services.

(8) "Employer" means any person from whom a state officer or employee or the officer's or employee's spouse received compensation. For purposes of this chapter, a customer or client

of a self-employed individual in a sole proprietorship or a professional practice is not considered to be an employer.

(9) "Financial interest" means an interest:

(A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or

(B) involving property or services.

The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of a state officer or employee in the common stock of a corporation unless the combined holdings in the corporation of the state officer or the employee, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. The term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

(10) "Information of a confidential nature" means information:

(A) obtained by reason of the position or office held; and

(B) which:

(i) a public agency is prohibited from disclosing under IC 5-14-3-4(a);

(ii) a public agency has the discretion not to disclose under IC 5-14-3-4(b) and that the agency has not disclosed; or

(iii) is not in a public record, but if it were, would be confidential.

(11) "Person" means any individual, proprietorship, partnership, unincorporated association, trust, business trust, group, limited liability company, or corporation, whether or not operated for profit, or a governmental agency or political subdivision.

(12) "Political subdivision" means a county, city, town, township, school district, municipal corporation, special taxing district, or other local instrumentality. The term includes an officer of a political subdivision.

(13) "Property" has the meaning set forth in IC 35-41-1-23.

(14) "Represent" means to do any of the following on behalf of a person:

(A) Attend an agency proceeding.

(B) Write a letter.

(C) Communicate with an employee of an agency.

(15) "Special state appointee" means a person who is:

(A) not a state officer or employee; and

(B) elected or appointed to an authority, a board, a commission, a committee, a council, a task force, or other body designated by any name that:

(i) is authorized by statute or executive order; and

(ii) functions in a policy or an advisory role in the executive (including the administrative)

department of state government, including a separate body corporate and politic.

(16) "State officer" means any of the following:

- (A) The governor.
- (B) The lieutenant governor.
- (C) The secretary of state.
- (D) The auditor of state.
- (E) The treasurer of state.
- (F) The attorney general.
- (G) The superintendent of public instruction.

(17) The masculine gender includes the masculine and feminine.

(18) The singular form of any noun includes the plural wherever appropriate.

(Formerly: Acts 1974, P.L.4, SEC.2.) As amended by P.L.13-1987, SEC.4; P.L.5-1988, SEC.18; P.L.9-1990, SEC.1; P.L.15-1992, SEC.1; P.L.8-1993, SEC.7; P.L.22-1995, SEC.1; P.L.5-1996, SEC.1; P.L.44-2001, SEC.1; P.L.222-2005, SEC.1.

IC 4-2-6-2

Commission; creation; membership; vacancies

Sec. 2. (a) There is created a state ethics commission.

(b) The commission is composed of five (5) members appointed by the governor.

(c) No more than three (3) commission members shall be of the same political party. A person who:

- (1) holds an elected or appointed office of the state;
- (2) is employed by the state; or
- (3) is registered as a lobbyist under IC 2-7-2-1;

may not be a member of the commission. The governor shall designate one (1) member of the commission as the chairperson. Each appointment to the commission is for a period of four (4) years. A vacancy shall be filled by the governor for the unexpired term.

(d) The inspector general shall provide rooms and staff assistance for the commission.

(Formerly: Acts 1974, P.L.4, SEC.2.) As amended by P.L.13-1987, SEC.5; P.L.222-2005, SEC.2.

IC 4-2-6-2.1

Compensation of members

Sec. 2.1. Each member of the commission is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). A member is entitled to reimbursement for travel expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the department of administration and approved by the budget agency.
As added by P.L.9-1990, SEC.2.

IC 4-2-6-2.5

Jurisdiction of commission

Sec. 2.5. The commission has jurisdiction over the following persons:

-
- (1) A current or former state officer.
 - (2) A current or former employee.
 - (3) A person who has or had a business relationship with an agency.
 - (4) A current or former special state appointee.

As added by P.L.9-1990, SEC.3. Amended by P.L.15-1992, SEC.2; P.L.222-2005, SEC.3.

IC 4-2-6-3 Repealed

(Repealed by P.L.222-2005, SEC.50.)

IC 4-2-6-4

Commission; powers and duties; inspector general; complaints open to public inspection after finding probable cause; exceptions

Sec. 4. (a) The commission may do any of the following:

- (1) Upon a vote of four (4) members, refer any matter within the inspector general's authority to the inspector general for investigation.
 - (2) Receive and hear any complaint filed with the commission by the inspector general that alleges a violation of this chapter, a rule adopted under this chapter, or any other statute or rule establishing standards of official conduct of state officers, employees, an executive branch lobbyist (as defined in IC 4-2-7-1), or special state appointees.
 - (3) Obtain information and, upon a vote of four (4) members, compel the attendance and testimony of witnesses and the production of pertinent books and papers by a subpoena enforceable by the circuit or superior court of the county where the subpoena is to be issued.
 - (4) Recommend legislation to the general assembly relating to the conduct and ethics of state officers, employees, and special state appointees, including whether additional specific state officers or employees should be required to file a financial disclosure statement under section 8 of this chapter.
 - (5) Adopt rules under IC 4-22-2 to implement this chapter.
 - (6) Prescribe and provide forms for statements required to be filed under this chapter.
 - (7) Accept and file information:
 - (A) voluntarily supplied; and
 - (B) that exceeds the requirements of this chapter.
 - (8) Inspect financial disclosure forms.
 - (9) Notify persons who fail to file forms required under this chapter.
 - (10) Develop a filing, a coding, and an indexing system required by this chapter and IC 35-44-1-3
- (f).
- (11) Conduct research.
 - (12) Prepare interpretive and educational materials and programs.
- (b) The commission shall do the following:
- (1) Act as an advisory body by issuing advisory opinions to

interpret this chapter, the commission's rules, or any other statute or rule establishing standards of official conduct upon:

(A) request of:

- (i) a state officer or a former state officer;
- (ii) an employee or a former employee;
- (iii) a person who has or had a business relationship with an agency; or
- (iv) a special state appointee or former special state appointee; or

(B) motion of the commission.

(2) Conduct its proceedings in the following manner:

(A) When a complaint is filed with the commission, the commission may:

(i) reject, without further proceedings, a complaint that the commission considers frivolous or inconsequential;

(ii) reject, without further proceedings, a complaint that the commission is satisfied has been dealt with appropriately by an agency;

(iii) upon the vote of four (4) members, determine that the complaint does not allege facts sufficient to constitute a violation of this chapter or the code of ethics and dismiss the complaint; or

(iv) forward a copy of the complaint to the attorney general, the prosecuting attorney of the county in which the alleged violation occurred, the state board of accounts, a state officer, the appointing authority, or other appropriate person for action, and stay the commission's proceedings pending the other action.

(B) If a complaint is not disposed of under clause (A), a copy of the complaint shall be sent to the person alleged to have committed the violation.

(C) If the complaint is not disposed of under clause (A), the commission may promptly refer the alleged violation for additional investigation by the inspector general. If the commission finds by a majority vote that probable cause exists to support an alleged violation, it shall convene a public hearing on the matter within sixty (60) days after making the determination. The respondent shall be notified within fifteen (15) days of the commission's determination. Except as provided in this section, the commission's evidence relating to an investigation is confidential.

(D) A complaint filed with the commission is open for public inspection after the commission finds that probable cause exists. However, a complaint filed by the inspector general that contains confidential information under IC 4-2-7-8 may be redacted to exclude the confidential information. Every hearing and other proceeding in which evidence is received by the commission is open to the public. Investigative reports by the inspector general that are not filed with the commission may be kept confidential.

(E) A:

- (i) complaint that is filed with; or
- (ii) proceeding that is held by;

the commission before the commission has found probable cause is confidential unless the target of the investigation elects to have information disclosed, or the commission elects to respond to public

statements by the person who filed the complaint.

(F) The commission may acknowledge:

- (i) the existence and scope of an investigation before the finding of probable cause; or
- (ii) that the commission did not find probable cause to support an alleged violation.

(G) If a hearing is to be held, the respondent may examine and make copies of all evidence in the commission's possession relating to the charges. At the hearing, the charged party shall be afforded appropriate due process protection consistent with IC 4-21.5, including the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses.

(H) After the hearing, the commission shall state its findings of fact. If the commission, based on competent and substantial evidence, finds by a majority vote that the respondent has violated this chapter, a rule adopted under this chapter, or any other statute or rule establishing standards of official conduct of state officers, employees, or special state appointees, it shall state its findings in writing in a report, which shall be supported and signed by a majority of the commission members and shall be made public.

(I) If the commission, based on competent and substantial evidence, finds by a majority vote a violation of this chapter, a rule adopted under this chapter, or any other statute or rule establishing standards of official conduct of state officers, employees, or special state appointees, the commission may also take any of the actions provided in section 12 of this chapter.

(J) The report required under clause (H) shall be presented to:

- (i) the respondent;
- (ii) the appointing authority or state officer of the employee, former employee, or special state appointee; and
- (iii) the governor.

(K) The commission may also forward the report to any of the following:

- (i) The prosecuting attorney of each county in which the violation occurred.
- (ii) The state board of accounts.

(iii) The state personnel director.

(iv) The attorney general.

(v) A state officer.

(vi) The appointing authority.

(vii) Any other appropriate person.

(L) If the commission finds the respondent has not violated a code or statutory provision, it shall dismiss the charges.

(3) Review all conflict of interest disclosures received by the commission under IC 35-44-1-3, maintain an index of those disclosures, and issue advisory opinions and screening procedures as set forth in section 9 of this chapter.

(c) Notwithstanding IC 5-14-3-4(b)(8)(C), the records of the commission concerning the case of a respondent that are not confidential under IC 5-14-3-4(b)(2)(C) shall be available for inspection and copying in accordance with IC 5-14-3.

(Formerly: Acts 1974, P.L.4, SEC.2.) As amended by P.L.12-1983, SEC.4; P.L.13-1987, SEC.7; P.L.5-

1988, SEC.19; P.L.9-1990, SEC.4; P.L.15-1992, SEC.3; P.L.44-2001, SEC.2; P.L.222-2005, SEC.4.

IC 4-2-6-4.5

Violations reported; report to commission of action taken

Sec. 4.5. Whenever an appointing authority or a state officer receives a report under section 4(b)(2) (G) of this chapter, the appointing authority or state officer shall report to the commission the action taken in response to the report. The commission may require in the report that the appointing authority or the state officer submit the response required by this section in a reasonable, specified amount of time. *As added by P.L.13-1987, SEC.8. Amended by P.L.9-1990, SEC.5.*

IC 4-2-6-5

Repealed

(Repealed by P.L.222-2005, SEC.50.)

IC 4-2-6-5.5

Conflict of interest; advisory opinion by inspector general

Sec. 5.5. (a) A current state officer, employee, or special state appointee shall not knowingly:

(1) accept other employment involving compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or require the individual's recusal from matters so central or critical to the performance of the individual's official duties that the individual's ability to perform those duties would be materially impaired;

(2) accept employment or engage in business or professional activity that would require the individual to disclose confidential information that was gained in the course of state employment; or

(3) use or attempt to use the individual's official position to secure unwarranted privileges or exemptions that are:

(A) of substantial value; and

(B) not properly available to similarly situated individuals.

(b) A written advisory opinion issued by the inspector general or the individual's supervisor granting approval of outside employment is conclusive proof that an individual is not in violation of subsection (a) (1) or (a)(2).

As added by P.L.222-2005, SEC.5.

IC 4-2-6-6

Present or former state officers and employees; special state appointees; compensation resulting from confidential information

Sec. 6. No state officer or employee, former state officer or employee, or special state appointee shall accept any compensation from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature.

(Formerly: Acts 1974, P.L.4, SEC.2.) As amended by P.L.15-1992, SEC.4.

IC 4-2-6-7**State officers and employees; excess compensation for sale or lease**

Sec. 7. A state officer or employee may not receive compensation:

- (1) for the sale or lease of any property or service which substantially exceeds that which the state officer or employee would charge in the ordinary course of business; and
 - (2) from any person whom he knows or, in the exercise of reasonable care and diligence should know, has a business relationship with the agency in which the state officer or employee holds a position.
- (Formerly: Acts 1974, P.L.4, SEC.2.) As amended by P.L.9-1990, SEC.6.*

IC 4-2-6-8**Financial disclosure; filing false statement; penalty**

Sec. 8. (a) The following persons shall file a written financial disclosure statement:

- (1) The governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, attorney general, and state superintendent of public instruction.
- (2) Any candidate for one (1) of the offices in subdivision (1) who is not the holder of one (1) of those offices.
- (3) Any person who is the appointing authority of an agency.
- (4) The director of each division of the department of administration.
- (5) Any purchasing agent within the procurement division of the department of administration.
- (6) An employee required to do so by rule adopted by the commission.

(b) The statement shall be filed with the commission as follows:

- (1) Not later than February 1 of every year, in the case of the state officers and employees enumerated in subsection (a).
 - (2) If the individual has not previously filed under subdivision (1) during the present calendar year and is filing as a candidate for a state office listed in subsection (a)(1), before filing a declaration of candidacy under IC 3-8-2 or IC 3-8-4-11, petition of nomination under IC 3-8-6, or declaration of intent to be a write-in candidate under IC 3-8-2-2.5, or before a certificate of nomination is filed under IC 3-8-7-8, in the case of a candidate for one (1) of the state offices (unless the statement has already been filed when required under IC 3-8-4-11).
 - (3) Not later than sixty (60) days after employment or taking office, unless the previous employment or office required the filing of a statement under this section.
 - (4) Not later than thirty (30) days after leaving employment or office, unless the subsequent employment or office requires the filing of a statement under this section.
- The statement must be made under affirmation.

(c) The statement shall set forth the following information for the preceding calendar year or, in the case of a state officer or employee who leaves office or employment, the period since a previous statement was filed:

- (1) The name and address of any person known:

(A) to have a business relationship with the agency of the state officer or employee or the office sought by the candidate; and

(B) from whom the state officer, candidate, or the employee, or that individual's spouse or unemancipated children received a gift or gifts having a total fair market value in excess of one hundred dollars (\$100).

(2) The location of all real property in which the state officer, candidate, or the employee or that individual's spouse or unemancipated children has an equitable or legal interest either amounting to five thousand dollars (\$5,000) or more or comprising ten percent (10%) of the state officer's, candidate's, or the employee's net worth or the net worth of that individual's spouse or unemancipated children. An individual's primary personal residence need not be listed, unless it also serves as income property.

(3) The names and the nature of the business of the employers of the state officer, candidate, or the employee and that individual's spouse.

(4) The following information about any sole proprietorship owned or professional practice operated by the state officer, candidate, or the employee or that individual's spouse:

(A) The name of the sole proprietorship or professional practice.

(B) The nature of the business.

(C) Whether any clients are known to have had a business

relationship with the agency of the state officer or employee or the office sought by the candidate.

(D) The name of any client or customer from whom the state officer, candidate, employee, or that individual's spouse received more than thirty-three percent (33%) of the state officer's, candidate's, employee's, or that individual's spouse's nonstate income in a year.

(5) The name of any partnership of which the state officer, candidate, or the employee or that individual's spouse is a member and the nature of the partnership's business.

(6) The name of any corporation (other than a church) of which the state officer, candidate, or the employee or that individual's spouse is an officer or a director and the nature of the corporation's business.

(7) The name of any corporation in which the state officer, candidate, or the employee or that individual's spouse or unemancipated children own stock or stock options having a fair market value in excess of ten thousand dollars (\$10,000). However, if the stock is held in a blind trust, the name of the administrator of the trust must be disclosed on the statement instead of the name of the corporation. A time or demand deposit in a financial institution or insurance policy need not be listed.

(8) The name and address of the most recent former employer.

(9) Additional information that the person making the disclosure chooses to include.

Any such state officer, candidate, or employee may file an amended statement upon discovery of additional information required to be reported.

(d) A person who:

(1) fails to file a statement required by rule or this section in a timely manner; or

(2) files a deficient statement;

upon a majority vote of the commission, is subject to a civil penalty at a rate of not more than ten dollars (\$10) for each day the statement remains delinquent or deficient. The maximum penalty under this

subsection is one thousand dollars (\$1,000).

(e) A person who intentionally or knowingly files a false statement commits a Class A infraction. *(Formerly: Acts 1974, P.L.4, SEC.2.) As amended by P.L.12-1983, SEC.5; P.L.13-1987, SEC.9; P.L.9-1990, SEC.7; P.L.3-1993, SEC.237; P.L.44-2001, SEC.3; P.L.14-2004, SEC.180; P.L.222-2005, SEC.6.*

IC 4-2-6-9

Conflict of economic interests

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

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- (1) The state officer, employee, or special state appointee.
 - (2) A member of the immediate family of the state officer, employee, or special state appointee.
 - (3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a trustee, a partner, or an employee.
 - (4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.
- (b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:
- (1) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or
 - (2) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.
- (c) A written determination under subsection (b)(2) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(2) shall be filed with the appointing authority.
- (Formerly: Acts 1974, P.L.4, SEC.2.) As amended by P.L.9-1990, SEC.8; P.L.15-1992, SEC.5; P.L.22-1995, SEC.2; P.L.222-2005, SEC.7.*

IC 4-2-6-10

Repealed

(Repealed by Acts 1978, P.L.2, SEC.428.)

IC 4-2-6-10.5

Prohibition against financial interest in contract; exceptions

Sec. 10.5. (a) Subject to subsection (b), a state officer, an employee, or a special state appointee may not knowingly have a financial interest in a contract made by an agency.

(b) The prohibition in subsection (a) does not apply to:

(1) a state officer, an employee, or a special state appointee who does not participate in or have official responsibility for any of the activities of the contracting agency, if:

- (A) the contract is made after public notice or, where applicable, through competitive bidding;
- (B) the state officer, employee, or special state appointee

files with the commission a statement making full disclosure of all related financial interests in the contract;

(C) the contract can be performed without compromising the performance of the official duties and responsibilities of the state officer, employee, or special state appointee; and

(D) in the case of a contract for professional services, the appointing authority of the contracting agency makes and files a written certification with the commission that no other state officer, employee, or special state appointee of that agency is available to perform those services as part of the regular duties of the state officer, employee, or special state appointee; or

(2) a state officer, an employee, or a special state appointee who, acting in good faith, learns of an actual or prospective violation of the prohibition in subsection (a), if, not later than thirty (30) days after learning of the actual or prospective violation, the state officer, employee, or special state appointee:

(A) makes a full written disclosure of any financial interests to the contracting agency and the commission; and

(B) terminates or disposes of the financial interest.

As added by P.L.222-2005, SEC.8.

IC 4-2-6-11

One year restriction on certain employment or representation; advisory opinion

Sec. 11. (a) As used in this section, "particular matter" means:

- (1) an application;
- (2) a business transaction;
- (3) a claim;
- (4) a contract;
- (5) a determination;
- (6) an enforcement proceeding;
- (7) an investigation;
- (8) a judicial proceeding;
- (9) a lawsuit;
- (10) a license;
- (11) an economic development project; or
- (12) a public works project.

The term does not include the proposal or consideration of a legislative matter or the proposal, consideration, adoption, or implementation of a rule or an administrative policy or practice of general

application.

(b) This subsection applies only to a person who served as a state officer, employee, or special state employee after January 10, 2005. A former state officer, employee, or special state appointee may not accept employment or receive compensation:

- (1) as a lobbyist (as defined in IC 4-2-7-1);
- (2) from an employer if the former state officer, employee, or special state appointee was:
 - (A) engaged in the negotiation or the administration of one

(1) or more contracts with that employer on behalf of the state or an agency; and

(B) in a position to make a discretionary decision affecting the:

- (i) outcome of the negotiation; or
- (ii) nature of the administration; or

(3) from an employer if the former state officer, employee, or special state appointee made a regulatory or licensing decision that directly applied to the employer or to a parent or subsidiary of the employer;

before the elapse of at least three hundred sixty-five (365) days after the date on which the former state officer, employee, or special state appointee ceases to be a state officer, employee, or special state appointee.

(c) A former state officer, employee, or special state appointee may not represent or assist a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state officer, employee, or special state appointee, even if the former state officer, employee, or special state appointee receives no compensation for the representation or assistance.

(d) A former state officer, employee, or special state appointee may not accept employment or compensation from an employer if the circumstances surrounding the employment or compensation would lead a reasonable person to believe that:

- (1) employment; or
- (2) compensation;

is given or had been offered for the purpose of influencing the former state officer, employee, or special state appointee in the performance of his or her duties or responsibilities while a state officer, an employee, or a special state appointee.

(e) A written advisory opinion issued by the inspector general certifying that:

- (1) employment of;
- (2) representation by; or
- (3) assistance from;

the former state officer, employee, or special state appointee does not violate this section is conclusive proof that a former state officer, employee, or special state appointee is not in violation of this section.

As added by P.L.9-1990, SEC.9. Amended by P.L.15-1992, SEC.6; P.L.222-2005, SEC.9.

IC 4-2-6-11.5

Lobbyists prohibited from serving on executive branch boards, commissions, authorities, or task forces; exception for advisory bodies

Sec. 11.5. (a) This section applies only to a person appointed after January 10, 2005.

(b) As used in this section, "advisory body" means a board, a

commission, a committee, an authority, or a task force of the executive department that is authorized only to make nonbinding recommendations.

(c) Except as provided in subsection (d), a lobbyist (as defined in IC 4-2-7-1) may not serve as a member of a board, a commission, a committee, an authority, or a task force of the executive department.

(d) A lobbyist (as defined in IC 4-2-7-1) may serve as a member of an advisory body.

As added by P.L.222-2005, SEC.10.

IC 4-2-6-12

Violations; penalties; employment sanctions

Sec. 12. If the commission finds a violation of this chapter, a rule adopted under this chapter, or any other statute or rule governing official conduct of state officers, employees, or special state appointees in a proceeding under section 4 of this chapter, the commission may take any of the following actions:

(1) Impose a civil penalty upon a respondent not to exceed three (3) times the value of any benefit received from the violation.

(2) Cancel a contract.

(3) Bar a person from entering into a contract with any agency for a period specified by the commission.

(4) Order restitution or disgorgement.

(5) Reprimand, suspend, or terminate an employee or a special state appointee.

(6) Reprimand or recommend the impeachment of a state officer.

(7) Bar a person from future state employment as an employee or future appointment as a special state appointee.

As added by P.L.9-1990, SEC.10. Amended by P.L.15-1992, SEC.7; P.L.222-2005, SEC.11.

IC 4-2-6-13

Retaliation against employee or former employee for filing complaint or furnishing information or testimony

Sec. 13. (a) Except as provided in subsection (b), a state officer, an employee, or a special state appointee shall not retaliate or threaten to retaliate against an employee or a former employee because the employee or former employee did any of the following:

(1) Filed a complaint with the commission or the inspector general.

(2) Provided information to the commission or the inspector general.

(3) Testified at a commission proceeding.

(b) A state officer, an employee, or a special state appointee may take appropriate action against an employee who took any of the actions listed in subsection (a) if the employee:

(1) did not act in good faith; or

(2) knowingly or recklessly provided false information or testimony to the commission.

(c) A person who violates this section is subject to action under section 12 of this chapter.

(d) A person who knowingly or intentionally violates this section commits a Class A misdemeanor. In addition to any criminal penalty imposed under IC 35-50-3, a person who commits a misdemeanor under this section is subject to action under section 12 of this chapter.

As added by P.L.15-1992, SEC.8. Amended by P.L.44-2001, SEC.4; P.L.222-2005, SEC.12.

IC 4-2-6-14

Prohibitions; criminal penalty

Sec. 14. (a) A person may not do any of the following:

(1) Knowingly or intentionally induce or attempt to induce, by threat, coercion, suggestion, or false statement, a witness or informant in a commission proceeding or investigation conducted by the inspector general to do any of the following:

(A) Withhold or unreasonably delay the production of any testimony, information, document, or thing.

(B) Avoid legal process summoning the person to testify or supply evidence.

(C) Fail to appear at a proceeding or investigation to which the person has been summoned.

(D) Make, present, or use a false record, document, or thing with the intent that the record, document, or thing appear in a commission proceeding or investigation to mislead a commissioner or commission employee.

(2) Alter, damage, or remove a record, document, or thing except as permitted or required by law, with the intent to prevent the record, document, or thing from being produced or used in a commission proceeding or investigation conducted by the inspector general.

(3) Make, present, or use a false record, document, or thing with the intent that the record, document, or thing appear in a commission proceeding or investigation to mislead a commissioner or commission employee.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class A misdemeanor.
As added by P.L.44-2001, SEC.5. Amended by P.L.222-2005, SEC.13.
